

### **REMARKS**

This communication responds to the Office Action having an electronic notification date of December 30, 2009.

Claims 1, 16, and 20 are amended, no claims are canceled or added; as a result, claims 1-4, 6-16, and 18-21 stand pending in this application. The amendments are fully supported by the applicants' specification (e.g., at page 3, paragraph 08; page 13, paragraph 49; FIG. 8A, callout 816; and FIG. 8B, callout 829) and do not add new matter.

#### **The Rejection of Claims Under § 101**

Claims 16, 18, 19, and 21 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

The Office Action at page 3 contends that claim 16 does not recite, in the body of claim, any computerized or mechanical apparatus used to perform the process. In response to the rejection, Applicants have amended claim 16 to include "***using an interface device, storing information ...***" and "***using a radio-frequency identification tag to store the updated at least one fade out indicator ....***" Thus, amended claim 16 is clearly tied to particular apparatus and conforms to the requirements set forth in the Supreme Court precedents cited by the Office Action. Therefore, claim 16 and its dependent claims 18-19 and 21 are indeed directed to statutory subject matter.

Accordingly, Applicants respectfully request that the claim rejections under 35 U.S.C. § 101 be reconsidered, in light of the amendments, and withdrawn.

#### **The Rejection of Claims Under § 103**

Claims 1-4, 6-8, 20, and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bauer (US 2003/0216969 A1) in view of Nguyen (US 6,006,334 A) and Horwitz (US 2003/0083964 A1).

The U.S. Supreme Court decision of *KSR v. Teleflex* provides a tripartite test to evaluate obviousness.

A rationale to support a conclusion that a claim would have been obvious is that ***all the claimed elements were known in the prior***

*art* and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded nothing more than predictable results to one of ordinary skill in the art.<sup>1</sup> (Emphasis added)

Applicants will show that the cited references, singly or in combination, neither teach nor suggest all limitations of Applicants' independent claims 1, 16, and 20, as currently amended.

For at least the reasons set forth below, Applicants respectfully submit that the above-identified claims are patentable over Bauer in view of Nguyen, and Horwitz, and the claims are therefore in condition for allowance. Applicants believe that the patentability of the claims over the cited arts is best understood by discussing amended independent method claim 16 as representative of the independent claims of the application.

Independent claim 16, as amended, now reads, in pertinent part, “**updating the at least one fade out indictor, based on a change in a condition** of an object corresponding to the selected master data.” (Emphasis added throughout).

Applicants respectfully submit that Bauer, Nguyen, and Horowitz, individually or as part of any combination, do not teach or suggest the above claim element. Bauer is directed to methods and systems to “collect item information from RFID tags attached to items in an inventory ... to perform various inventory management processes.”<sup>2</sup> Bauer in FIGs. 1 and 2 shows an item inventory 170 including RFID tags 280.<sup>3</sup> Bauer specifically states, “an RFID tag that includes item information associated with the corresponding item ... a **shelf life indicator** associated with the item.”<sup>4</sup> The Office Action, at page 8 in rejecting claim 16, interprets the “shelf life” or “expiration date” of Bauer as the claimed *fade out indicator*. However, Bauer does not describe updating the shelf life indicator or expiration date. Bauer, for example, states, “the APSSO application may request and receive periodic inventory **updates of inventory data** reflecting a current inventory of items in inventory.”<sup>5</sup> Bauer further specifies “Jobs 240 may perform a SKU update job that may run periodically ... that identifies any new items (e.g.,

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<sup>1</sup> KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 82 U.S.P.Q.2d 1385 (2007)

<sup>2</sup> Bauer, Abstract

<sup>3</sup> Office Action, page 4, and Bauer, [0014]

<sup>4</sup> Bauer, page 26, claim 43

<sup>5</sup> Id., [0108]

SKUs) that may have been added to environment.”<sup>6</sup> Nonetheless, Bauer is totally silent with respect to the claim element of “**updating the at least one fade out indicator, based on a change in a condition of an object corresponding to the selected master data,**” as recited in the amended claim 16.

Amended claim 16, further recites, “using a radio-frequency identification tag to **store the updated at least one fade out indicator** with the selected master data.” It stands to reason that, in the absence of teaching updating at least one fade out indicator, Bauer cannot teach or suggest *storing the updated at least one fade out indicator*, much less, “using a radio-frequency identification tag to **store the updated at least one fade out indicator** with the selected master,” as required by the amended claim 16. Accordingly, Bauer, individually or as part of any combination, does not teach or suggest the above-discussed claim elements.

The Office Action has used Nguyen to show “a fade out indicator to be used to remove selected master data that are not accessed by a fadeout date.”<sup>7</sup> Nguyen “relates to a method and system for providing a commercial connectionless distributed service for authentication using a random factor to recognize compromised passwords.”<sup>8</sup> However, Nguyen does not describe the above-discussed claim elements of the amended claim 16. Further, the other patent reference Horwitz, also cited by the Office Action, does not cure the defects in Bauer and Nguyen. Horwitz provides “a method for tracking each item in a cluster of items.”<sup>9</sup> Nonetheless, Horwitz does not teach or suggest the claim elements that Applicants showed above to be missing from Bauer and Nguyen. Accordingly, at least for the reasons set forth above, Bauer, Nguyen, and Horwitz, separately or in combination, fail to teach each and every element of the amended claim 16.

Thus, Applicants respectfully submit that amended independent claim 16 and its dependent claim 21 are not rendered obvious by the combination of Bauer, Nguyen, and Horwitz and are in condition for allowance. Further, dependent claim 21 may be patentable for its own limitations.

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<sup>6</sup> Id., [0171]

<sup>7</sup> Office Action, page 5

<sup>8</sup> Nguyen, col. 1, lines 59-62

<sup>9</sup> Horwitz, paragraph 0021

Independent claims 1 and 20 include substantially analogous claim elements as discussed above with respect to claim 16. Thus, similar arguments as presented with regard to claim 16 are also applicable to independent claims 1 and 20. Thus, for at least the reasons articulated above the proposed combination of Bauer, Nguyen, and Horwitz does not render these claims and the dependent claims 2-4, and 6-8 obvious. Accordingly, claims 1, 2-4, 6-8, and 20 are asserted to be in condition for allowance.

Claims 16, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bauer (US 2003/0216969 A1) in view of Nguyen (US 6,006,334 A).

Independent claim 16 was discussed in the above section and was shown to be patentable over Bauer in view of Nguyen. Claims 18 and 19 are dependent on claim 16 and are deemed to include claim elements of the claim from which they depend. Thus, for at least the reasons set forth above with respect to claim 16, these claims are also patentable over Bauer in view of Nguyen. Accordingly claims 16, 18 and 19 are in condition for allowance.

Claims 9, 10, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bauer (US 2003/0216969 A1) modified by Nguyen (US 6,006,334 A) and Horwitz (US 2003/0083964 A1) in view of Nicastro (US 2002/0073114 A1).

Claims 9-10 and 12 are dependent on claim 1. Applicants assert that, for the reasons stated in the prior section, Bauer in view of Nguyen and Horwitz does not teach or suggest all of the claim elements of claim 1. Moreover, the Final Office Action's proposed combination with Nicastro does not cure the defect. Thus, claims 9-10 and 12 are in condition for allowance.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bauer (US 2003/0216969 A1) modified by Nguyen (US 6,006,334 A), Horwitz (US 2003/0083964 A1), and Nicastro (US 2002/0073114 A1) in view of Cesar (US 6,172,596 B1).

Claim 11 is dependent on claim 1. Applicants assert that, for the reasons stated earlier, Bauer in view of Nguyen and Horwitz does not teach or suggest all of the claim elements of claim 1. Moreover, the Office Action's proposed combination with Nicastro in view of Cesar does not cure the defect. Thus, claim 11 is in condition for allowance.

Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bauer (US 2003/0216969 A1) modified by Nguyen (US 6,006,334 A), Horwitz (US 2003/0083964 A1), and Nicastro (US 2002/0073114 A1) in view of Seelinger (US 2002/0087554 A1).

Claims 13-15 are dependent on claim 1. Applicants assert that, for the reasons stated earlier, Bauer in view of Nguyen and Horwitz does not teach or suggest all of the claim elements of claim 1. Moreover the Final Office Action's proposed combination with Nicastro in view of Seelinger does not cure the defect. Thus, claims 13-15 are in condition for allowance.

Therefore, Applicants respectfully request that the claim rejections under 35 U.S.C. §103(a) be reconsidered, in light of the amendments and the presented arguments, and withdrawn.

**CONCLUSION**

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone the undersigned at (408) 660-2014 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 29<sup>th</sup> day of March, 2010.

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